



**Linda S. Adams**  
Secretary for  
Environmental Protection

# State Water Resources Control Board

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## Executive Office

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**Arnold  
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Governor

## **NOTICE OF A PROPOSED AMENDMENT TO THE POLICY FOR IMPLEMENTING THE STATE REVOLVING FUND (SRF) FOR CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES**

This announcement is to inform interested and affected parties of the State Water Resources Control Board's (State Water Board's) plan to consider amending the *Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities* (SRF Policy) to 1) modify the penalty provisions related to Performance Certification Reports and 2) make minor editorial changes. The Division of Financial Assistance (Division) is seeking public comment on the options and proposed amendments that will be considered for adoption by the State Water Board at a future Board meeting. The proposed amendments are provided in Exhibit A of this notice.

### BACKGROUND

The Division administers the SRF Loan Program to provide low-interest loans for construction of wastewater treatment and water recycling facilities, implementation of non-point source (NPS) projects and programs, and development and execution of estuary comprehensive conservation and management plans.

The SRF Policy was originally adopted by the State Water Board on August 18, 1988, and last amended on September 22, 2005. Under the SRF Policy, Section XVIII. B, projects are assessed a one-tenth (0.1) of one percent penalty on the daily outstanding loan balance for the period of time that either a Project Performance Report and Certification, or Corrective Action Report are late. A Project Performance Report and Certification, or Corrective Action Report must be submitted within 15 months of the initiation of operation date.

Between August 2002 and May 2006, six agencies failed to Certify or submit Corrective Action Plans for ten SRF projects, within 15 months of the initiation of operation dates, as required by the SRF Policy. Based on the existing policy the six affected agencies owe \$58,668,856 in penalties. All of these projects have since met the requirements of the SRF Policy by submitting the required Certifications or Corrective Action Reports. All agencies have made all required loan repayments in a timely manner, with no evidence to suggest that the agencies intended to purposely ignore the SRF Loan Program requirements. Failure to certify the projects did not adversely affect water quality.

At the September 6, 2006, Board Meeting, the State Water Board considered a Resolution to waive the penalties for the ten projects. Division staff recommended waiving the penalties because the application of the penalties appeared unfairly punitive.

The State Water Board did not waive the penalties at its September 6, 2006, Meeting. The Board directed Division staff to re-examine the penalty provision and recommend a penalty that

is consistent with the circumstances associated with each project and reasonably reflects the need for the Project Performance Report and Certification, or Corrective Action Report.

Division staff evaluated seven options for revising the penalty provision of the SRF Policy. The Board will consider, at a future meeting, whether to amend the SRF Policy to implement one or a combination of the options. Staff will recommend that the amended SRF Policy apply to future projects, as well as the ten projects that did not originally comply with the reporting requirements.

#### CERTIFICATION PENALTY OPTIONS EVALUATED

The Division reviewed the following amendment options. Options are listed from most desirable to least desirable.

1. Retain a portion of the loan balance until the appropriate Report is submitted;
2. Stop processing any pending or future applications for new loans or grants, and withhold payments on any existing loans and grants that the Agency may have with the State Water Board, until the Certification requirement is met;
3. Implement an administrative procedure to bring recipients into compliance up to and including possible termination of the loan agreement;
4. Lower the penalty rate from one-tenth (0.1) of one percent per day to ten (10) percent per year on the remaining loan balance, equating to 0.0274 percent per day;
5. Revise the penalty rate to be similar to the Water Code's Mandatory Minimum Penalty;
6. Completely eliminate the penalty from the SRF Policy;
7. No Action – leave the SRF Policy as is.

A penalty calculation spreadsheet, Attachment B, shows a comparison of the monetary options.

#### **OPTION 1 – *Retain a portion of the loan balance until the appropriate report is submitted.***

The State Water Board's *Small Community Wastewater Grant Program Guidelines* (SCWG Guidelines), Section X. (I), has a provision to retain two and one-half percent (2.5%) of the grant until all deliverables relating to the SCWG Project have been submitted and approved by the Division. This provision could be applied to the SRF Loan Program as well. Currently the SRF Policy similarly requires that the applicant cannot receive more than 90 percent of the SRF Loan funds until a Final Revenue Program is submitted and approved by the Division.

**Pros:** Retaining two and one-half percent (2.5%) of the total loan balance will help ensure that projects are implemented in accordance with the signed contracts and that all the reporting requirements will be met. This option will make the SRF Policy consistent with the current SCWG Guidelines and more reasonable than the existing SRF Policy requirement. This option is also similar to retention requirements in many construction contracts. It is also similar to the existing SRF Policy requirement that an applicant must submit and receive approval of a Final Revenue Program before it can receive more than 90 percent of its loan funds.

**Cons:** This option may create a shortage of cash for the applicant at the end of the Project because the applicant will have to wait from 12 (twelve) to fifteen (15) months before receiving disbursement of the last 2.5 percent of its loan. As a result, some agencies may have to look elsewhere for funds to bridge the gap. This could, in some instances, decrease the overall benefit of the SRF's reduced interest rate.

**OPTION 2 –** *Stop processing any pending or future applications for new loans or grants. If applicable, withhold payments on any existing loans and grants that the agency may have with the State Water Board, until the Certification requirements are met.*

**Pros:** Agencies that receive loans or grants from the State Water Board are interested in receiving timely payments or having their applications reviewed quickly. Withholding payments or suspending processing should motivate applicants to promptly submit any reports required by the SRF Policy.

**Cons:** This option can be used effectively when agencies have other loans or grants with the Division, or are applying for additional loans or grants. This option does not provide any leverage with agencies that do not intend to apply for other loans or grants, or do not have existing loans or grants.

**OPTION 3 –** *Implement an administrative procedure to bring recipients into compliance up to and including possible termination of the loan agreement.*

The Division would go through a series of steps to bring recipients into compliance. First the Division would remind recipients of their obligation to submit one of the required reports. A follow-up letter would then be sent to the recipient giving it a reasonable deadline within which to submit one of the required reports. The follow-up letter could include a provision that if the recipient does not submit one of the required reports by the deadline, the Division will seek to terminate the loan agreement and recall the loan due to breach of the agreement terms.

**Pros:** This is an administrative approach that is consistent with the overall manner in which the SRF Program is implemented. The Division's experience is that most recipients are willing to submit the required reports, but that some agencies overlook this requirement at the end of their projects. When reminded, most agencies willingly submit the overdue reports. The threat of having the loan recalled is probably sufficient to motivate those few agencies that continue to be tardy with their reports. It is unlikely that the Division would have to recall loans, and this contingency would only be used as a last resort. If the Division recalled a loan due to a recipient's failure to submit one of the required reports, it would increase the funds available to loan to other SRF projects.

**Cons:** This option could deprive an agency of funds it may need for other projects.

**OPTION 4** – *Lower the penalty rate from one-tenth (0.1) of one percent per day to ten (10) percent per year on the remaining loan balance, equating to 0.0274 percent per day.*

This option would assess a lower fixed penalty rate based on an annual percentage of the outstanding loan amount. This would lower the rate to 0.0274 percent per day.

**Pros:** This revised rate would reduce the penalties assessed on the ten projects that did not comply with the SRF reporting requirement by 73 percent, from \$58,668,856 to \$16,073,659. This revised penalty rate is more reasonable and significantly lowers the interest penalty.

**Cons:** Assessment of a penalty of ten (10) percent per year on the remaining loan balance exceeds the statutory authority regarding interest amounts on SRF loans. Further, both rates are disproportionate to the consequences of an agency not submitting the required report. The resulting penalties from either of these rates may be considered unlawful.

**OPTION 5** – *Revise the penalty rate to be similar to other Water Code penalties for reporting violations in Waste Discharge Requirements.*

The Porter-Cologne Water Quality Control Act (Porter-Cologne), Division 7, Chapter 5.5, Section 13385 (h)(1), assesses mandatory penalties of three thousand dollars (\$3,000) for each serious violation and each complete period of 30 days following the deadline as defined in Section 13385.1. The SRF Policy could be revised to be similar to the Water Code in assessing the same amount of penalties on projects that do not submit the Project Performance Report and Certification, or Corrective Action Report on time.

**Pros:** This option simplifies the penalty assessment by making it consistent with Porter-Cologne, and assesses the same level of penalties against all projects regardless of the outstanding loan balance. Penalties would be more reasonable – on the order of thousands of dollars instead of millions of dollars.

**Cons:** Assessing a mandatory penalty of three thousand dollars (\$3,000) for not submitting the required report exceeds the statutory authority of the SRF Loan Program. This penalty may be disproportionate to the violation. Furthermore, the resulting penalty may be considered unlawful.

**OPTION 6** – *Completely eliminate the penalty from the SRF Policy.*

This option would modify the SRF Policy to eliminate the penalty provision. Division staff would rely on applicants' good faith efforts.

**Pros:** This option is used by other states. Three other states (Florida, Oregon, and Ohio) were contacted by Division staff to determine the level of monetary penalties for projects that have not complied with the Project Performance Report and Certification, or Corrective Action Report requirements. None of the states contacted have any monetary penalty in place for projects that do not submit a Project Performance Report and Certification, or Corrective Action Report in a timely manner. The only state that reported having compliance problems was Ohio. According to staff with Ohio's SRF program, they use administrative means such as letters and in-office meetings to persuade applicants to comply.

**Cons:** No penalty amounts would accrue to SRF account. Total elimination of the penalty removes the Division's leverage. The Division believes it is appropriate to have a means of ensuring that loan recipients evaluate the operation of their projects and certify to the Division that they are functioning correctly. It is important that the Division be able to document the successful operation of the SRF projects that the Water Board funds.

**OPTION 7 – No Action – leave the SRF Policy as is.**

The current penalty rate, one-tenth (0.1) of one percent per day, assessed on the daily outstanding loan balance, for the period of time that the Project Performance Report and Certification, or Corrective Action Report, are late was added to the SRF Policy on January 21, 1993. The penalty was adopted because staff encountered difficulty getting the required reports submitted and the penalty helps induce applicants to submit one of the required reports.

**Pros:** Based on the existing SRF Policy, the six affected agencies must pay \$58,668,856 in penalties. This could increase funds that can be used to provide loans to other agencies that are in need of implementing various types of water quality improvement projects. This option will not require a change to the SRF Policy.

**Cons:** The current level of SRF penalty exceeds the State Water Board's statutory authority, does not accurately reflect the need for the reports, and may be unlawful.

The purpose of the SRF Loan Program is to provide low interest funds to agencies for construction of wastewater treatment facilities to improve water quality. If the Water Board enforced this excessive penalty, it would divert funds for water quality protection from one agency to other agencies.

**EDITORIAL CHANGES TO THE POLICY**

The Introduction, Purpose, and Objective sections of the SRF Policy will be edited to make the information consistent with the proposed amendments.

**STAFF RECOMMENDATION**

Division staff recommends that the State Water Board implement a combination of Options 1, 2, and 3 to ensure that Project Performance Reports and Certifications or Corrective Action Reports are submitted in a timely manner.

**OPTION 1 – Retain a portion of the loan balance until the appropriate report is submitted;**

**OPTION 2 – Stop processing any pending or future applications for new loans or grants, and withhold payments on any existing loans and grants that the agency may have with the State Water Board, until the Certification requirements are met; and,**

**OPTION 3 – Implement an administrative procedure to bring recipients into compliance up to and including possible termination of the loan agreement.**

The State Water Board should revise the Introduction, Purpose, and Objective sections of the SRF Policy to be consistent with these changes.

## STATE WATER BOARD CONSIDERATION OF PROPOSED AMENDMENT

The Division intends to present the proposed amendments to the State Water Board for consideration on July 17, 2007, at the regular Board Meeting. Further information on the Board Meeting can be found at <http://www.waterboards.ca.gov/wksmtgs/2007/schedule.html>.

The public will have until Wednesday, May 30, 2007, to review these Policy recommendations and submit comments.

The proposed changes to the SRF Policy are included in Attachment A, and penalty calculations for various options evaluated are included in Attachment B.

### TO TESTIFY

You may submit written comments and give oral statements regarding the proposed Amendment to the SRF Policy.

Written comments should be submitted as early as possible to allow for thorough staff analysis. All written comments are due by **noon on Wednesday, May 30, 2007**. Written comments should be directed to:

Ms. Song Her, Clerk to the Board  
State Water Resources Control Board  
1001 "I" Street, 24th Floor  
Sacramento, CA 95814  
FAX: (916) 341-5620  
email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov).

Please also indicate in the subject line, "Comment Letter – SRF Policy".

Oral comments may be directed to the State Water Board at its July 17, 2007, Board Meeting.

### PARKING AND ACCESSIBILITY

All visitors are required to sign in and receive a badge prior to attending any meeting in the Cal/EPA building. The Visitor and Environmental Services Center is located just inside and to the left of the Cal/EPA Building's public entrance. Valid picture identification may be required due to the security level. Please allow up to 15 minutes for this process. Public parking is available in the City of Sacramento Garage on I Street between 10<sup>th</sup> and 11<sup>th</sup> Streets. Metered parking spaces are available on area streets. The Cal/EPA building is accessible by bus and light rail lines operated by Sacramento Regional Transit. The Cal/EPA building Hearing Rooms are accessible to persons with disabilities.

## CONTACT PERSON

Any questions regarding this issue should be directed to Mr. Ahmad Kashkoli at (916) 341-5855 or by email at [akashkoli@waterboards.ca.gov](mailto:akashkoli@waterboards.ca.gov). Individuals who require special accommodations are requested to contact Ms. Karen White at (916) 341-5883 or [kwhite@waterboards.ca.gov](mailto:kwhite@waterboards.ca.gov) prior to the meeting date. TTY users may contact the California Relay Service at (800) 735-2929 or voice line at (800) 735-2922.



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Song Her  
Clerk to the Board

Date: May 1, 2007



**ATTACHMENT A  
PROPOSED AMENDMENTS TO THE SRF POLICY**

*The following changes will be made to Section I, Introduction:*

This is the ~~seventh~~ **eighth** amendment to the SRF Policy originally adopted by the State Water Resources Control Board (SWRCB) on August 18, 1988.

*The Following Changes will be made to Section II: Purpose and Objective*

The primary purpose of the SRF Loan Program is to implement the Clean Water Act (CWA) and various State laws including the Clean Water Bond Law of 1984, the Safe, Clean, Reliable Water Supply Act (1996 Bond Law), the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act (2000 Bond Law), **Water Quality/Flood/Resource Protection/Park Bonds (Proposition 84)**, and any subsequent bond laws, by assisting in the financing of wastewater treatment facilities necessary to prevent water pollution, recycle water, correct nonpoint source and storm drainage pollution problems, and provide for estuary enhancement, and thereby protect and promote the health, safety, and welfare of the inhabitants of the State.

*The following changes are proposed for Section XVIII.B: Project Performance Report and Certification:*

**B. Project Performance Report and Certification**

One year after initiation of operation, the recipient is required to certify that the project meets the project performance standards and must submit a project performance certification report. The project performance certification report should summarize the data collected during the one-year project performance period and discuss the project's current and future ability to meet the project performance standards. The project performance certification report should also address any items noted as deficient in the final project inspection report. The Division will approve the certification of the project, if appropriate, at the end of the one-year certification period. A detailed outline of the Project Performance Report requirements for various types of projects can be obtained from the ~~Operations Unit~~ **Division**.

If the project cannot be affirmatively certified, the recipient must prepare a corrective action report, which analyzes the project's inability to meet the project performance standards. The corrective action report must include an estimate of the nature, scope and cost of the corrective action, and a time schedule for meeting the project performance standards. The time schedule must include an estimated date by which the loan recipient will certify the project and submit a project performance certification report. The Division will conduct follow-up inspections, as necessary, to monitor the recipient's progress towards meeting the project performance standards. The cost of the corrective action is not eligible for loan assistance.

**The Division shall retain two and one-half percent (2.5%) of the total loan balance until submittal of a project performance certification report, including a signed certificate of performance, or a corrective action report.** If the recipient does not submit a project performance certification report which includes a signed certificate of performance, or a corrective action plan **report**, within fifteen (15) months of the initiation of operation date, **the Division will also stop processing any pending or future applications for new loans or grants and withhold payments on any existing loans and grants that the agency may have with the State Water Board until the project**



performance certification report, or corrective action report, are submitted ~~an interest penalty of one-tenth of one (0.1) percent per day, will be assessed on the outstanding loan balance due. The interest penalty will begin on the first day after expiration of the appropriate deadline.~~

The Division may use any legal means to obtain the project performance report and certificate or corrective action report from the applicant.

Further information on Project Performance Certification is included in Appendix J.

*The following changes are proposed for page 4 of Appendix J: Project Certification:*

Project Certification

The Division shall retain two and one-half percent (2.5%) of the total loan balance until submittal of a project performance certification report, including a signed certificate of performance, or a corrective action report. If the recipient does not submit a project performance certification report which includes a signed certificate of performance, or a corrective action report, within fifteen (15) months of the initiation of operation date, the Division will also stop processing any pending or future applications for new loans or grants and withhold payments on any existing loans and grants that the agency may have with the State Water Board until Certification requirements are met. ~~an interest penalty of one-tenth of one (0.1) percent per day will be assessed on the outstanding loan balance due. The interest penalty will begin on the first day after expiration of the appropriate deadline.~~

After the Division has reviewed and approved the Project Performance Certification Report, the recipient will be notified that the project is being recommended for close out. If a Corrective Action Plan is submitted the Division will conduct follow-up inspections as necessary to monitor the applicant's progress towards meeting the Project Performance Standards. When the project can be certified, the recipient prepares a Project Performance Certification Report for Division approval.

Additional information on Project Performance Certification may be obtained from the Division's ~~Operations Unit~~ by calling (916) ~~227-4564~~ 341-5700.

ATTACHMENT B

PENALTY CALCULATIONS FOR VARIOUS OPTIONS EVALUATED

AGENCIES NOT SUBMITTED BY DUE DATE (*CAP or **PPRC)						0.1%/DAY ORIGINAL		*** 10%/ANNUAL 0.0274%/DAY		\$3K/MONTH PER WATER CODE	
						PENALTY	PER LOAN	PENALTY	PER LOAN	PENALTY	PER LOAN
Escondido, City of	C-06-4156-110	10/8/2005	11/14/2005	37	\$17,778,999.60	\$657,822.99	\$657,822.99	\$180,225.48	\$180,225.48	\$6,000.00	\$6,000.00
	C-06-4156-310	7/1/2004	4/1/2005	274	\$14,081,470.95	\$3,858,323.04		\$1,057,074.81		\$27,000.00	
		4/1/2005	11/12/2005	255	\$13,340,340.90	\$3,401,786.93	\$7,260,109.97	\$931,996.42	\$1,989,071.22	\$27,000.00	\$54,000.00
Alameda, City of	C-06-4007-610	8/22/2004	5/6/2005	257	\$1,530,442.00	\$393,323.59		\$107,759.89		\$27,000.00	
		5/6/2005	5/6/2006	365	\$1,455,361.00	\$531,206.77		\$145,536.10		\$36,000.00	
		5/6/2006	6/6/2006	31	\$1,390,929.00	\$43,118.80	\$967,649.16	\$11,813.37	\$265,109.36	\$6,000.00	\$69,000.00
Santa Ana Watershed Project Authority	C-06-4452-110	12/30/2002	3/28/2003	88	\$3,151,131.74	\$277,299.59	\$277,299.59	\$75,972.49	\$75,972.49	\$9,000.00	\$9,000.00
	C-06-4452-120	1/5/2003	3/28/2003	82	\$4,973,437.56	\$407,821.88	\$407,821.88	\$111,732.02	\$111,732.02	\$9,000.00	\$9,000.00
	C-06-4452-130	1/5/2003	3/28/2003	82	\$4,031,624.14	\$330,593.18	\$330,593.18	\$90,573.47	\$90,573.47	\$9,000.00	\$9,000.00
	C-06-4452-140	1/5/2003	3/28/2003	82	\$4,296,549.50	\$352,317.06	\$352,317.06	\$96,525.22	\$96,525.22	\$9,000.00	\$9,000.00
Vallejo Sanitation and Flood Control District	C-06-4790-110	12/17/2004	4/8/2005	112	\$13,798,201.00	\$1,545,398.51	\$1,545,398.51	\$423,396.85	\$423,396.85	\$12,000.00	\$12,000.00
North San Mateo CSC	C-06-4801-110	3/1/2006	4/12/2006	42	\$4,327,077.88	\$181,737.27	\$181,737.27	\$49,791.03	\$49,791.03	\$6,000.00	\$6,000.00
Sacramento, City of	C-06-4441-120	8/1/2002	1/4/2003	156	\$36,436,769.53	\$5,684,136.05		\$1,557,297.55		\$18,000.00	
		1/4/2003	1/4/2004	365	\$34,871,289.21	\$12,728,020.56		\$3,487,128.92		\$36,000.00	
		1/4/2004	1/4/2005	365	\$33,271,368.32	\$12,144,049.44		\$3,327,136.83		\$36,000.00	
		1/4/2005	1/4/2006	365	\$31,636,249.17	\$11,547,230.95		\$3,163,624.92		\$36,000.00	
		1/4/2006	6/6/2006	153	\$29,965,157.40	\$4,584,669.08	\$46,688,106.07	\$1,256,073.72	\$12,791,261.94	\$15,000.00	\$141,000.00
TOTAL						\$58,668,856		\$16,073,659		\$324,000	

\* CAR = Corrective Action Plan

\* \* PPRC = Project Performance Report and Certification

\*\*\* 10% Annual Rate=

0.000273973

Daily Rate